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In the Supreme Court of the United States

OCTOBER TERM, 1988

LOCAL FREIGHT DRIVERS, LOCAL 208, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, ETC., PETITIONER

v.

ROZAY'S TRANSFER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. 185(a), confers federal district court jurisdiction over a suit alleging that a collective bargaining agreement is invalid on the basis of fraud in the inducement.

2. Whether the National Labor Relations Board has exclusive jurisdiction over a claim that a union's material misrepresentations induced an employer to enter into a collective bargaining agreement.

3. Whether an employer could reasonably rely on a union to disclose, before execution of a collective bargaining agreement, that trustees of a pension fund had decided not to waive an employer's liability to the fund when the union had previously undertaken to obtain that waiver and when relief from that liability was a principal inducement for the agreement.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Respondent, Rozay's Transfer, a California trucking company, and petitioner, Local Freight Drivers, Local 208, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, were parties to a collective bargaining agreement that expired in September 1981 (Pet. App. 2a). Under the terms of that agreement, Rozay's was required to make contributions to the Western Conference of Teamsters Pension Trust Fund (the Trust Fund) on behalf of its employees (*ibid.*). Following the expiration of that agreement, Rozay's continued to make contributions to the Trust Fund until the end of April 1982 (Br. in Opp. App. B10-B11).[1]

[1] A stipulation between the parties, which was incorporated in the district court's pretrial order, is reproduced at Br. in Opp. App. B3-B24.

In May 1982, during negotiations for a new contract, Rozay's advised petitioner that, because of severe economic problems, it had to reduce labor costs. Rozay's proposed eliminating pension contributions and reducing holiday, vacation, and sick leave benefits. Pet. App. 2a-3a. In June 1982, Rozay's made a written proposal calling for concessions, including the cessation of pension contributions. *Id.* at 3a. When it received no response, Rozay's advised petitioner that it would implement its proposal unilaterally (*id.* at 4a). Ultimately, it made no contributions to the Trust Fund for the period May 1982 through February 1983. *Id.* at 5a.

In September 1982, petitioner filed an unfair labor practice charge with the National Labor Relations Board (NLRB or Board), alleging that the cessation of pension contributions was an unfair labor practice. Petitioner also filed a grievance under the expired collective bargaining agreement. Pet. App. 4a.

On January 17, 1983, Rozay's president, William S. Rozay, met with Maurice E. Anderson, International Vice President of the International Brotherhood of Teamsters, and petitioner's president, Archie Murrietta, to settle the disputes between the parties. An agreement was reached that included "a reduction of hourly wages by $1.00 per hour and resumption of the payment of pension contributions prospectively" at the rate of 98 cents per hour. Pet. App. 5a.

At the January 17 meeting, Anderson also agreed to ask the Trust Fund to waive Rozay's contributions to the Trust Fund for the period from May 1982 to February 1983. Anderson said that the Trust Fund had forgiven unpaid pension contributions in the past and that he would speak with certain people and see to it that Rozay's would not have to make its back contributions. In addition, Murrietta promised to write a letter to the Trust Fund on Rozay's behalf. Pet. App. 5a; Br. in Opp. App. B12-B13. On January 21, Rozay's sent a letter to petitioner confirming the terms of the January 17 agreement. The letter stated that no retroactive pension contributions would be required. Petitioner's reply did not disagree with this statement. Pet. App. 5a.

On January 26, Murrietta sent a letter to the Trust Fund—with a copy to Rozay's—asking the Fund to waive Rozay's unpaid contributions. Pet. App. 5a. Within a few weeks of the January 17 meeting, Mr. Rozay also called Anderson to ask about the status of efforts to obtain a waiver of Rozay's potential liability to the Fund. Anderson assured Rozay that he was doing everything necessary and "was on the right track to ensure that Rozay's would not have to make pension contributions to the Trust Fund for the period of time in question." Br. in Opp. App. B14.

On February 16, 1983, however, the trustees of the Trust Fund voted not to forgive Rozay's unpaid pension contributions for the period from May 1982 through February 1983. Pet. App. 5a. Murrietta learned of this decision at a social gathering on March 4, but did not advise Rozay's of it. *Id.* at 6a.

On March 8, 1983, the parties executed a new collective bargaining agreement, as well as a settlement agreement that resolved all pending litigation (Pet. App. 6a). The collective bargaining agreement was effective as of September 30, 1981, and thus, on its face, obligated Rozay's to make the pension contributions that it had withheld beginning in May of 1982. *Southwest Administrators, Inc.* v. *Rozay's Transfer*, 791 F.2d 769, 774-775 (9th Cir. 1986), cert. denied, 107 S. Ct. 951 (1987).[2]

2. On March 24, 1983, some two weeks after the parties executed the contract and settlement agreement, the Trust Fund sent a letter notifying Rozay's for the first time of the trustees'

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[2] As the Ninth Circuit explained in its earlier decision (791 F.2d at 771 n.1):

> Apparently the parties believed it was not possible simply to draft a collective bargaining agreement providing for prospective-only payment of contributions to the pension fund. It was the established policy of the Western Conference of Teamsters Pension Trust Fund not to accept contributions made under any collective bargaining agreement which provided for a "gap" in contributions. Thus, when a collective bargaining agreement expired, in order for the employer to be reinstated in the trust fund, the new agreement had to provide for the payment of contributions for the interim between the two agreements.

decision not to waive Rozay's liability to the Fund. In June 1983, the Trust Fund sued Rozay's, under Sections 502(a) and 515 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(a) and 1145, for the unpaid contributions, along with interest, liquidated damages, and attorney's fees. Pet. App. 7a.

Rozay's learned at a deposition that in February 1983, before the collective bargaining agreement had been executed, the Trust Fund had decided not to forgive Rozay's back contributions. Rozay's then filed a third-party complaint alleging that petitioner had committed a fraud, and, at the trial, Murrietta admitted that he had been advised of the Trust Fund's decision before the agreement was signed. Pet. App. 6a, 8a. The district court found that Murrietta was guilty of fraud in concealing his knowledge from Rozay's, but held that his misconduct was not a valid defense against the Trust Fund in an ERISA collection suit. The court entered judgment against Rozay's for $122,789 - $76,133 in unpaid pension contributions, $15,227 in liquidated damages, $25,039 in interest, and $6,390 in attorney's fees (Pet. App. 8a). The Ninth Circuit affirmed. *Southwest Administrators, Inc.* v. *Rozay's Transfer, supra.*

3. Rozay's then instituted the instant action against petitioner, alleging that it had been induced by petitioner's fraud into executing the March 8, 1983, collective bargaining agreement and seeking rescission of the agreement and indemnification for its losses. The complaint alleged federal jurisdiction under Section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185(a). Br. in Opp. App. B2-B3.

After trial to the court, the district court found that petitioner, through Murrietta, had "intentionally concealed" the fact that the trustees of the Trust Fund had refused to waive Rozay's unpaid contributions to the Fund, "knowing that this decision was a material fact which changed the essential nature" of the bargain the parties had struck (Pet. App. 8a-9a). The court further found that this information had been withheld because petitioner knew that Rozay's would not enter the contract if "Mr. Rozay was told that the past contributions would not be forgiven" and that "Mr. Rozay justifiably relied upon the

intentional misrepresentation of Murrietta when signing the agreement" (*id.* at 9a). The court rescinded the agreement, and also ordered petitioner to indemnify Rozay's for the judgment in the Trust Fund's collection action and for attorney's fees that Rozay's had incurred in defending that action and in pursuing an appeal (*id.* at 10a). The court denied Rozay's requests for attorney's fees in this case and for punitive damages (*id.* at 11a).

3. The court of appeals affirmed the district court's judgment (Pet. App. 1b-38b).

a. The court first rejected the contention, advanced by an amicus, that the NLRB had exclusive jurisdiction over the dispute. Pet. App. 11b. The court acknowledged that petitioner's conduct was arguably an unfair labor practice, but stated that Section 301(a) of the LMRA "carves out a broad exception to the NLRB's primary jurisdiction for claims arising out of collective bargaining agreements, whether or not such claims would also be an unfair labor practice * * *" (Pet. App. 11b). That exception, the court continued, "applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement" (*id.* at 12b (citations omitted)). Accordingly, the court held that Section 301(a) conferred federal jurisdiction over "this action alleging fraudulent inducement in the formation of the agreement." *Ibid.*

b. Applying the clearly erroneous standard, the court of appeals upheld the district court's findings (i) that petitioner intended to deceive Rozay's when it concealed the fact that the Trust Fund had decided, before the collective bargaining agreement was executed, not to waive Rozay's contributions to the Fund, (ii) that this fact was material, and (iii) that Rozay's had detrimentally relied on this omission by executing the agreement (Pet. App. 13b-17b).

The court of appeals also rejected petitioner's contention that—because petitioner could not require the Trust Fund to forgive Rozay's liability and was not legally responsible for advising Rozay's of its obligations to the Fund—Rozay's reliance on petitioner's nondisclosure was unreasonable as a matter of

law. Pet. App. 18b-23b. The court emphasized that petitioner's concealment "did not pertain to *legal* consequences, which the employer is presumed to understand," but rather "to a material *fact*, namely, that the trust fund had already refused to exercise its discretion to forgive the delinquent payments" (*id.* at 20b-21b). Moreover, the court of appeals continued, it was not unreasonable as a matter of law for Rozay's to have "relied on the union's assurances that it could convince the trust fund to act favorably * * *" (*id.* at 23b).[3]

DISCUSSION

1. Petitioner's principal contention is that this dispute falls outside Section 301(a) of the LMRA and is thus within the Board's exclusive jurisdiction. Petitioner argues that Section 301(a) does not encompass actions challenging the validity of a collective bargaining agreement, as opposed to actions seeking relief for a breach of such an agreement, and that the courts of appeals are divided on this question. Pet. 7-11. Petitioner also contends that only the Board should adjudicate claims alleging misconduct in bargaining that precedes the formation of a collective agreement. Pet. 11-15.

In our view, the court of appeals correctly held that Section 301(a) of the LMRA encompasses an action alleging that a collective bargaining agreement is invalid on the basis of fraud in the inducement. This interpretation of Section 301(a) is necessary to assure the consistent applicability to collective agreements of federal law fashioned under that provision. Because there is an exception to the Board's exclusive jurisdiction for actions brought under Section 301(a), federal courts have jurisdiction over a claim that a contract is invalid because of fraudulent inducement, even though the same conduct may constitute an unfair labor practice remediable by the Board. Any conflict on this point between the court of appeals' decision

[3] The court of appeals also concluded that petitioner's concealment caused Rozay's to incur its liability to the Trust Fund and rejected petitioner's challenges to the relief granted by the district court. Pet. App. 23b-38b. These rulings are not encompassed by the questions presented in the petition.

in this case and decisions of other courts of appeals does not now warrant this Court's review. The courts of appeals are moving toward a consensus that Section 301(a) confers jurisdiction to adjudicate a claim that a collective bargaining agreement is invalid as well as a claim that a valid agreement has been breached; those circuits that have not yet adopted this view are likely to do so when they reconsider the issue.

a. In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959), this Court articulated the general rule regarding the scope of the Board's exclusive jurisdiction:

> When an activity is arguably subject to § 7 or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board * * *.[4]

The court of appeals and the parties to this case all acknowledged that fraudulently inducing an employer or a union to enter into a collective bargaining agreement is an unfair labor practice subject to the NLRA. That assumption is well founded. Although there is no reported case in which the Board has ordered the rescission of a contract or indemnification on the basis of fraud in the inducement, the Board has determined that frauduent concealment in bargaining over plant closings, relocations, and comparable matters is an unfair labor practice.[5] Similarly, federal courts, applying *Garmon*, have concluded that state law fraud claims are preempted by the NLRA because fraudulent inducement of a collective agreement

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[4] Accord, *e.g.*, *Local 100, United Ass'n* v. *Borden*, 373 U.S 690, 697 (1963); *Iron Workers* v. *Perko*, 373 U.S. 701, 705 (1963); *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 302 (1971); *Farmer* v. *United Brotherhood of Carpenters Local 25*, 430 U.S. 290, 296 (1977).

[5] See, *e.g.*, *ILGWU* v. *NLRB*, 463 F.2d 907, 917, 921-923 (D.C. Cir. 1972); *Penntech Papers, Inc.*, 263 N.L.R.B. 264, 265, 276-276 (1982), enforced, 706 F.2d 18, 27 (1st Cir.), cert. denied, 464 U.S. 892 (1983). The remedies of rescission and indemnification are among those that the Board has ordered for violations of the obligation to bargain. See *NLRB* v. *Warehousemen's Union Local 17*, 451 F.2d 1240, 1242-1243 (9th Cir. 1971); *Graphic Arts Int'l Union, Local 280* v. *NLRB*, 596 F.2d 904, 910-911 (9th Cir. 1979).

is arguably an unfair labor practice.[6] Thus, a claim of fraud in the inducement of a collective bargaining agreement is within the scope of *Garmon*'s general rule.

There is a well-established exception to *Garmon*, however, for claims encompassed by Section 301(a) of the LMRA. See, *e.g.*, *Farmer* v. *United Brotherhood of Carpenters Local 25*, 430 U.S. 290, 297 n.8 (1977); *Vaca* v. *Sipes*, 386 U.S. 171, 179-180 (1967). A court may adjudicate such a claim even though the conduct at issue is also an unfair labor practice. *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 197 (1962); *William E. Arnold Co.* v. *Carpenters District Council*, 417 U.S. 12, 15-18 (1974). Thus, if Rozay's action is within the scope of Section 301(a), the lower courts had jurisdiction to decide it.

b. Section 301(a) confers jurisdiction on federal courts to hear "[s]uits for violation of contracts" between employers and unions.[7] A narrow reading of the language of this section might suggest that federal jurisdiction is limited to cases in which one party to an admittedly valid collective bargaining agreement has alleged that another party has breached that agreement. However, as some courts have noted, the language of the statute does not compel that interpretation,[8] and the legislative history

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[6] See *Parker* v. *Connors Steel Co.*, 855 F.2d 1510, 1515-1518 (11th Cir. 1988); *Serrano* v. *Jones & Laughlin Steel Co.*, 790 F.2d 1279 (6th Cir. 1986).

[7] In its entirety, this section provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

[8] As the Third Circuit observed in *Mack Trucks, Inc.* v. *International Union, UAW*, 856 F.2d 579, 586 (1988), cert. denied, No. 88-1137 (Feb. 27, 1989):

> The precise meaning of "suits for violation of contracts" in § 301(a) is unclear, and Congress did not define it in the LMRA. The phrase could assume the existence of a valid labor agreement, and refer only to suits for a breach of a specific contractual provision, or it could grant jurisdic-

suggests that Congress intended to provide courts with broad authority to determine the legal effect of collective bargaining agreements.[9] Moreover, in a series of decisions by this Court, Section 301(a) has been interpreted to embody a comprehensive system of federal law applicable to collective bargaining agreements. In our view, Section 301(a)'s applicability to suits involving the validity of collective agreements is necessary to preserve the consistency and integrity of that body of law.

In *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957), the Court held that Section 301(a) was not merely a jurisdictional statute that defined a class of cases subject to adjudication in federal courts. Rather, the court stated, that section "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements * * *." *Id.* at 451. That body of law is to be based upon "the policy of our national labor laws," including the terms of federal statutes, the policy and background of that legislation, and other sources that commend themselves to "judicial inventiveness." *Id.* at 456-457.

In its subsequent decisions, the Court has repeatedly construed Section 301(a) so as to assure that this body of law is consistently applicable to disputes arising under collective agreements. For example, in *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 103-104 (1962), the Court held that Section 301(a) requires state courts to apply federal law to cases

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tion to resolve a dispute over whether the parties' conduct constituted the formation of a contract.

In *Mack Trucks*, the Third Circuit held that it had jurisdiction under Section 301 to hear an employer's action seeking a declaratory judgment that the union was bound by a collective bargaining agreement. The questions presented in the union's petition for certiorari did not include the issue of the lower courts' jurisdiction under Section 301.

[9] See 93 Cong. Rec. 3656-3657 (1947) (remarks of Reps. Barden and Hartley) (Section 301(a) "contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances," including declaratory judgment actions seeking "declarations * * * of legal rights under the contract").

which, under that statute, could have been brought in federal court.[10] The Court explained (*id.* at 103):

> The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy.[11]

In keeping with this concern for "comprehensiveness," this Court recently extended the same rule of preemption "beyond suits alleging contract violations." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 210 (1985). In *Allis-Chalmers*, an employee complained that his employer had acted in bad faith in processing a claim for disability benefits under a plan established by a collective bargaining agreement. Although under state law, this claim sounded in tort, not contract, the Court held that federal law was controlling. Invoking "policies that animate § 301" (*ibid.*), the Court explained (*id.* at 211):

> [Q]uestions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort.

These decisions reflect a broad conception of the federal law of collective bargaining agreements. Section 301(a) is a "con-

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[10] In *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), the Court had held that state courts may entertain suits over which federal courts would have jurisdiction under Section 301(a).

[11] Indeed, because suits determining the meaning and application of collective bargaining agreements now arise solely under federal law, such cases are not subject to the traditional rule that federal preemption defenses must be determined initially in state court; rather, under the "complete preemption" doctrine, actions to enforce collective bargaining agreements may always be removed to federal court under 28 U.S.C. 1441(b). See *Caterpillar Inc.* v. *Williams*, 107 S. Ct. 2425, 2430-2431 (1987).

gressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis-Chalmers Corp.*, 471 U.S. at 209. "Comprehensiveness" (*id.* at 211) requires that this law be "paramount in *the area covered by the statute.*" *Lucas Flour Co.*, 369 U.S. at 103 (emphasis added).

This perspective lends strong support to the decision below. Fraud in the inducement is a traditional contractual defense that can be interposed in a Section 301(a) action for breach of a collective bargaining agreement.[12] When such a defense is raised, its validity is determined by reference to federal common law. If a purpose of Section 301(a) is to provide a uniform body of federal law that is consistently applicable to "disputes arising out of labor contracts" (*Allis-Chalmers Corp.*, 471 U.S. at 209), that section must also apply to suits seeking to invalidate contracts on the same ground.[13] Any different result would mean that the forum for the dispute, and possibly the applicable law, would depend on which of the parties to a collective agreement was at the top of the caption in a case in which fraud was the decisive issue.[14]

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[12] Thus, if petitioner had sued Rozay's for breach of an obligation under their collective bargaining agreement – a suit clearly encompassed by Section 301(a) – Rozay's could have asserted petitioner's fraudulent concealment of a material fact as a defense.

[13] See *Franchise Tax Bd.* v. *Laborers Vacation Trust*, 463 U.S. 1, 19 (1983) ("Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question.").

[14] In this case, if Rozay's suit was outside the scope of Section 301, it would be required to proceed before the Board, which would concededly apply federal law. However, in another case, if a party's claim of invalidity involved conduct that was not arguably subject to the NLRA, and the challenge to the collective bargaining agreement was held to fall outside Section 301(a), the party seeking to invalidate the contract could attempt to invoke state law. An issue that would be subject to federal law if interposed as a defense might then be subject to state law when made the basis of an action to invalidate a contract. This situation would present the same problems that this Court sought to avoid in *Dowd Box* and *Allis-Chalmers*.

We do not suggest that any defense to a contract could provide the basis for an action under Section 301(a). See *Allis-Chalmers Corp.*, 471 U.S. at 211-212. For instance, if a party attempted to assert a statutory claim that Congress has committed to the exclusive expertise of the Board as the basis for a Section 301(a) action, and contractual issues were only tangentially involved, a court would be justified in declining to hear the dispute under Section 301.[15] However, Rozay's lawsuit is based on fraud in the inducement, a traditional contract doctrine with which courts are familiar. As the facts of this case demonstrate, moreover, a claim of fraud is often intertwined with questions of the terms of and inducements for a collective agreement. See Pet. App. 14b-18b (resolving the issues of intent, materiality, and reliance on the basis of an analysis of the intent of the settlement agreement between petitioner and Rozay's); *id.* at 28b-30b (analyzing intention of parties with respect to retrospective liability for contributions to Trust Fund). These are traditionally concerns of courts hearing Section 301(a) suits. See *Allis-Chalmers Corp.*, 471 U.S. at 211 ("questions relating to what the parties to a labor agreement agreed * * * must be resolved by reference to uniform federal law").

For these reasons, we believe that the court of appeals correctly held that Section 301(a) is applicable to a claim of fraud in

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[15] As an example, we believe that the First Circuit reached the right result in *Hernandez* v. *National Packing Co.*, 455 F.2d 1252 (1972), when it refused to entertain a suit by employees alleging that a collective bargaining agreement was invalid because the union that had entered into it no longer had the support of a majority of the members of the bargaining unit. Cf. *Communications Workers of America* v. *Beck*, 108 S. Ct. 2641, 2647 (1988) (employees may not "circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation").

The precise line between disputes exclusively for the Board and those that may be brought both to the Board and to the courts need not be determined in this case. We think it clear, in any event, that the line is not the one for which petitioner contends—which would limit courts to cases in which a party alleges a violation of a valid contract (Pet. 9)—and that an action alleging fraud in the inducement is one which is suitable for the courts.

the inducement, whether it is asserted as a defense in an action for violation of a collective bargaining agreement or, as here, as the basis for a suit seeking invalidation of a contract and equitable relief.

c. The fact that the Board's statutory responsibilities often require it to determine contractual issues[16] does not support petitioner's argument (see Pet. 12-15) that the Board must be the exclusive forum for claims of fraud in the inducement. Congress withheld from the Board the "generalized power to determine the rights of parties under all collective agreements * * *." *NLRB* v. *C & C Plywood Corp.*, 385 U.S. 421, 427 (1967).[17] Thus, the Board decides issues of contract interpretation and enforcement only when necessary to adjudicate an unfair labor practice charge. *NLRB* v. *Strong Roofing & Insulating Co.*, 393 U.S. 357 (1969). If the Board does adapt contractual doctrines of common law origin to the labor relations setting, its reasonable judgments are entitled to deference from the courts when they fashion federal common law under the mandate of *Lincoln Mills*.[18] But contract defenses whose origins are in the common law are obviously not at the core of the Board's administrative expertise or its responsibilities under the NLRA. Accordingly, as this Court noted in a similar context, this is not a case in which "serious problems will arise from both the courts

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[16] See, *e.g.*, *UFCW Local 274*, 279 N.L.R.B. 180, 184 (1986), enforced *sub nom. Millco, Inc.* v. *NLRB*, 818 F.2d 869 (9th Cir. 1987); *Luther Manor Nursing Home*, 270 N.L.R.B. 949 (1984), enforced *sub. nom. UFCW Local 304A* v. *NLRB*, 772 F.2d 421 (8th Cir. 1985); *Electrical Workers IBEW Local 22 (Electronic Sound)*, 268 N.L.R.B. 760, 762 (1984), enforced, 748 F.2d 348 (8th Cir. 1984); *NLRB* v. *Truckdrivers Local 100*, 532 F.2d 569, 570-571 (6th Cir.), cert. denied, 429 U.S. 859 (1976).

[17] See *Chemical Workers* v. *Pittsburgh Glass*, 404 U.S. 157, 186-187 (1971). At the same time that Congress enacted Section 301, it also considered and rejected legislation that would have made all breaches of collective bargaining agreements unfair labor practices. H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 41-42 (1947). See also 93 Cong. Rec. 6443 (remarks of Senator Taft).

[18] See *NLRB* v. *United Insurance Co.*, 390 U.S. 254, 260 (1968) (common-law agency principles); *Pepsi-Cola Bottling Co.* v. *NLRB*, 659 F.2d 87, 89-90 (8th Cir. 1981).

and the Board having jurisdiction over acts which amount to an unfair labor practice." *Smith* v. *Evening News Ass'n*, 371 U.S. at 197-198.[19]

d. Petitioner contends that the court of appeals' decision conflicts with decisions of the First, Third, Fourth, Sixth, and Seventh Circuits. Pet. 8-9. However, in view of recent developments, as well as the types of claims in issue in the cases on which petitioner relies, we believe there is not presently a clear conflict among the circuits that would warrant this Court's review.

Two very recent decisions by the Third and Seventh Circuits have eliminated any conflict between the court of appeals' decision in this case and other decisions from those circuits. In *IBEW* v. *Sign-Craft, Inc.*, 864 F.2d 499 (1988), the Seventh Circuit overruled *NDK Corp.* v. *Local 1550, UFCW*, 709 F.2d 491 (7th Cir. 1983). See Pet. 8. On rehearing, and after circulating its opinion to all members of the court, the *Sign-Craft* panel noted that *NDK Corp.* was inconsistent with the decisions of other circuits, including the decision of the court of appeals below, and held that "under § 301(a) any disputes about the meaning or validity of collective bargaining agreements come within the jurisdiction of the federal courts." 864 F.2d at 502.[20]

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[19] The Board's traditional policy has been to decline to exercise its conceded jurisdiction "where, in its judgment, federal labor policy would best be served by leaving the parties to other processes of law." 371 U.S. at 198 n.6. See also *William E. Arnold Co.* v. *Carpenters*, 417 U.S. at 16 (noting the Board policy favoring arbitral resolution of "disputed conduct arguably both an unfair labor practice and a contract violation").

[20] *NDK* was a very brief per curiam decision. In *Sign-Craft*, the court explained that against the backdrop of cases that had taken a different view of the statute (864 F.2d at 502):

> [I]t appears that *NDK* gives too literal and narrow an interpretation to § 301(a). It rests too heavily on the mere labeling of the complaint as asserting either a violation of the contract or questioning its validity.

For reasons suggested above (p. 12 & n. 15, *supra*), *Sign-Craft*'s statement—that "any disputes" concerning the validity of collective bargaining agreements are within Section 301(a)—may be too broad.

Similarly, in *Mack Trucks, Inc.* v. *International Union, UAW*, 856 F.2d 579, 590 (1988), the Third Circuit held that Section 301(a) affords jurisdiction "to determine the existence of a collective bargaining agreement." The court clarified the reach of its decisions in *Adams* v. *Budd Co.*, 349 F.2d 368 (1965), and *Leskiw* v. *Local 1470, IBEW*, 464 F.2d 721, cert. denied, 409 U.S. 1041 (1972), upon which petitioner relies (Pet. 8), saying that they held only that "a party cannot invoke § 301 jurisdiction by alleging that the [collective bargaining agreement] itself constituted a violation [of] other preexisting rights." 856 F.2d at 589. There is no conflict between this proposition and the court of appeals' decision in this case.

Nor is review warranted by the decisions of the three remaining circuits said to conflict with the court of appeals' decision here. In *Mengel Co.* v. *Nashville Paper Products & Specialty Workers Union*, 221 F.2d 644 (6th Cir. 1955), the panel did hold, over the dissent of then Circuit Judge Potter Stewart, that the district court had no jurisdiction to determine whether the parties had entered a contract to arbitrate a dispute. However, the present validity of that decision is doubtful. It is now clear that courts are empowered—indeed, obligated—to determine whether parties to a collective bargaining agreement have agreed to arbitrate a dispute.[21] Moreover, *Mengel Co.* was decided prior to *Lincoln Mills*, and thus it is unlikely that the Sixth Circuit would consider itself bound by *Mengel* at this time.

In *Hernandez* v. *National Packing Co.*, 455 F.2d 1252, 1253 (1972), the First Circuit held in a one-page opinion that Section 301(a) did not cover an action brought by individual employees alleging that a collective bargaining agreement was invalid because the union that had made it did not have the support of a majority of the employees in the bargaining unit. By contrast to this case, the claim of invalidity in *Hernandez* was not based on a traditional defense to an alleged breach of contract. Rather, it

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[21] *Davis* v. *Ohio Barge Line, Inc.*, 697 F.2d 549, 555 (3d Cir. 1983). See, *e.g.*, *A T & T Technologies, Inc.* v. *Communications Workers of America*, 475 U.S. 643 (1986); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960).

involved the issue of whether the union was a duly recognized representative of employees in a bargaining unit, an issue which had been resolved in a Board-approved settlement. Thus, it is far from clear, particularly in view of intervening developments in the law, whether the First Circuit would view *Hernandez* as a bar to a suit to invalidate a contract based upon a defense like fraud in the inducement.

Finally, in *A.T. Massey Coal Co.* v. *International Union, UMW*, 799 F.2d 142 (1986), cert. denied, 107 S. Ct. 1964 (1987), the Fourth Circuit held that Section 301(a) did not confer jurisdiction over an action in which an employer alleged that it was not bound by a collective bargaining agreement to which an affiliate had subscribed. However, when the Fourth Circuit decided *Massey*, it apparently believed that the only cases on point had held that Section 301(a) did not confer jurisdiction over any claim that a contract was invalid. See 799 F.2d at 146. (Indeed, *Massey* relied heavily on *NKD Corp., supra*, which has since been overruled.[22]) In view of the recent decisions in this case, in *Mack Trucks, supra*, and in *Sign-Craft, supra*, as well as questions that have been raised concerning *Massey's* validity,[23] it is likely that the Fourth Circuit will reconsider *Massey's* statements on the scope of Section 301(a) if it is asked to do so. Because the law in this area is evolving, any conflict between *Massey* and the court of appeals' decision in this case does not now warrant review by this Court.[24]

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[22] Moreover, although *Massey* held that there was no jurisdiction under Section 301(a) over a suit by the employer, the court addressed the merits of the issue raised by the employer's suit in a consolidated appeal in a case brought by the union to enforce the agreement. In that context, the applicability of Section 301(a) to the employer's suit was a somewhat academic issue, and the Fourth Circuit addressed it only briefly. (In this respect, *Massey* is suggestive of the anomalies that could result from a rule that Section 301(a) does not apply to any actions challenging the validity of a collective bargaining agreement. See p. 11, *supra*.)

[23] *Mack Trucks, Inc.* v. *International Union, UAW*, 856 F.2d at 589 n. 10; *Claire Mfg. Co.* v. *ILGWU*, 667 F. Supp. 230, 231 (D. Md. 1987).

[24] Similarly, decisions of the Supreme Court of Oregon in which it stated that Section 301(a) did not cover a suit to rescind a contract were rendered

2. Petitioner also contends that the court of appeals erred in holding that Rozay's could reasonably rely on representations regarding its obligations to the Trust Fund. In petitioner's view, the cases establish that "an employer may not, as a matter of law, reasonably rely upon a union's representations concerning its trust fund obligations and discretionary internal trust policy." Pet. 18.

However, as framed by the lower courts, this case turns on a much narrower issue. Those courts held that the "misrepresentation" in this case was petitioner's failure to disclose the *fact* that the Trust Fund had already decided not to forgive Rozay's past-due contributions when the collective bargaining agreement was executed. Moreover, this omission followed petitioner's undertaking to "see to it that Rozay's would not have to make retroactive contributions for the period of May, 1982 through February, 1983" (Br. in Opp. App. B12-B13), and it came in the context of a negotiation in which petitioner learned, according to the district court's findings, that the "the whole point" of the agreement from Rozay's perspective was to obtain this type of relief. Pet. App. 14b; see *id.* at 15b-17b, 18b-23b. Whether or not it is correct, the court of appeals' holding—that, under these circumstances, Rozay's justifiably relied on petitioner's intentional failure to disclose the Trust Fund's decision—does not raise an issue of general importance warranting this Court's review.

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without the benefit of recent federal decisions on this issue. See *Corvallis Sand & Gravel Co.* v. *Hoisting & Portable Engineers Local Union No. 701*, 247 Or. 158, 168-169, 419 P.2d 38, 43-44 (1966) (in banc), cert. denied, 387 U.S. 904 (1967); *Northwest Administrators, Inc.* v. *Wildish Sand & Gravel Co.*, 275 Or. 659, 552 P.2d 547, 551 (1976) (in banc).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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